

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

29355

FILE:

B-214543.2

DATE: September 18, 1984

MATTER OF:

TM Systems, Inc.

DIGEST:

1. Protest that item offered by awardee is not equal to brand name equipment solicited need not be filed until protester received information identifying allegedly "unequal" item offered by awardee which placed protester on notice of its basis for protest.
2. Protest that procuring activity accepted nonconforming equipment is denied where protester has not shown precisely where procuring activity's opposite conclusion is incorrect.

TM Systems, Inc. (TM), protests the Sacramento Army Depot (Army) issuance of purchase order (PO) No. DAAG08-84-M-2135 to International Creative Data Industries, Inc. (ICDI). TM contends that the ICDI equipment is not equal to the brand name equipment solicited.

We deny the protest.

A threshold matter raised by the Army concerns the timeliness of TM's protest. The Army contends that TM's protest should be dismissed as untimely since our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1984), require that protests such as the one we have in the present case be filed within 10 working days from the time the basis of the protest is known and TM did not file its protest here until March 1, 1984, more than 10 working days after the Army's February 9 notice to TM of the award to ICDI.

TM states that it did not know its basis of protest (that the ICDI equipment is nonconforming) until March 5, 1984, when it received, pursuant to its Freedom of Information Act (FOIA) request, a copy of the PO issued to ICDI which listed the specific item offered by ICDI. TM sent the FOIA request to the Army the same day it was notified of the award to ICDI.

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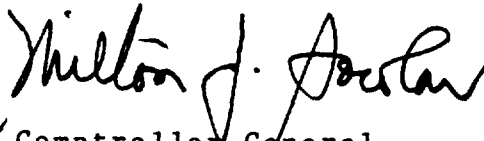
We find that TM's protest is timely. On February 9, TM knew only that award had been made to ICDI. TM did not know which item was offered by ICDI until March 5, when it received a copy of the PO issued to ICDI, which listed the ICDI part number offered. The Army does not dispute this. Since TM's protest is that the item offered by ICDI is not equal to the brand name equipment solicited and TM did not know which item was offered by ICDI until receiving a copy of the PO on March 5, TM could have waited to file its protest until after receiving this information. Accordingly, we do not consider TM's March 1 protest untimely. See East-West Riggers and Constructors, B-213091, Apr. 25, 1984, 84-1 C.P.D. ¶ 478.

In its report to our Office, the Army explains that the procurement was conducted under the small purchase procedures of section III, part 6, of the Defense Acquisition Regulation (DAR), reprinted in 32 C.F.R. pts. 1-39 (1983). The procedures allow agencies to conduct small purchases on an informal basis to reduce administrative costs. DAR, § 3-600. The Army solicited oral quotes from TM and ICDI. Following the confirmation by the cognizant engineering personnel that ICDI's product was equal to the brand name Data Products model, award was made to ICDI, the low offeror.

TM argues that the Army engineering personnel never approved the ICDI equipment. TM states that our review of the TM Systems equipment specifications will show that the ICDI equipment is not equal to the TM equipment or brand name solicited.

The protester has the burden of affirmatively proving its case. TM Systems, Inc., B-214303, Aug. 14, 1984, 84-2 C.P.D. ¶ ____; Pace Incorporated, B-212589, B-212611, Jan. 17, 1984, 84-1 C.P.D. ¶ 77. Here, the record shows that the cognizant engineering personnel approved the ICDI equipment. Although TM argues that the ICDI equipment is not equal to the brand name solicited, it has not shown precisely where the Army's opposite conclusion is incorrect. Unsupported allegations do not meet the protester's burden of presenting sufficient evidence to prove its case. Lion Brothers Company, Inc., B-212960, Dec. 20, 1983, 84-1 C.P.D. ¶ 7. Further, it is not our practice to conduct investigations under our bid protest function for the

purpose of establishing the protester's unsupported assertions. See Reliability Sciences, Incorporated,
B-212852, May 2, 1984, 84-1 C.P.D. ¶ 493.

for 
Comptroller General
of the United States